



— BUREAU OF —
RECLAMATION

Section 7 Consultations for Ongoing Actions: The Environmental Baseline

2020 Stakeholder Workshop on Streamlining
Environmental Reviews

The Section 7(a)(2) Mandate

- Every agency must “must insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species....” 16 U.S.C. § 1536(a)(2).
- Put simply: Do not cause jeopardy or adverse modification



The Prohibited Acts

- Jeopardy
 - “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species....”
- Adverse Modification
 - “a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.”
- Both are cause-and-effect relationships

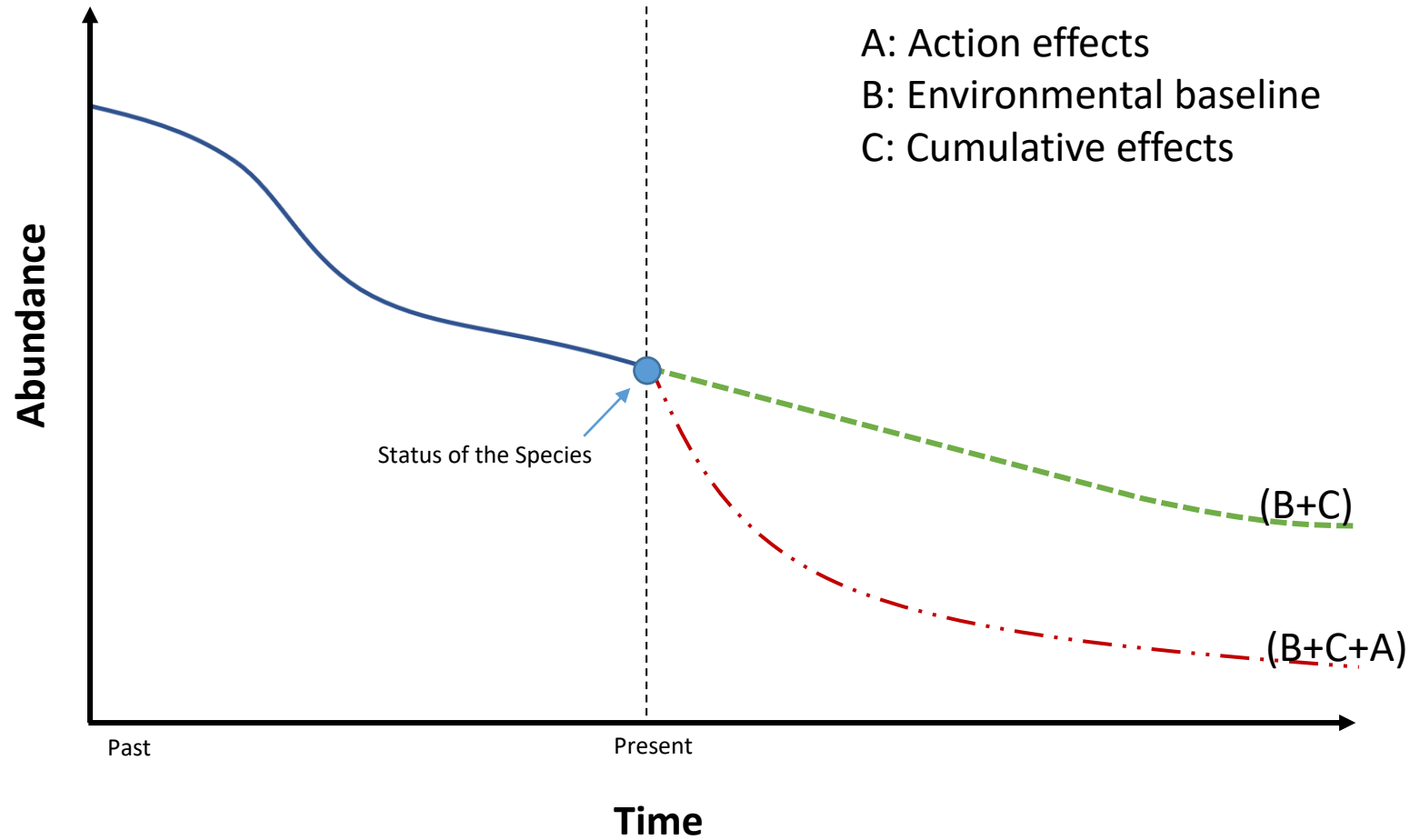


The Analytical Framework

- Environmental baseline ("B")
 - The effects of everything that has happened to date
- Cumulative effects ("C")
 - The effects of future, non-federal actions
- Action effects ("A")
 - The effects of the discretionary agency action under consultation
- B+C provides the reference point for measuring appreciable reduction/diminishment
 - $(A+B+C) - (B+C) = 7(a)(2)$ determination



Hypothetical Jeopardy Analysis: New Action



The Ongoing Action Problem

- What's the starting point for measuring effects?
 - For new actions, B is simply the world as we see it
 - But, for ongoing actions (e.g., dam operations), the world as we see it includes the effects of the action
- The law requires consulting on the effects of the whole action
 - Can't just look at changes in the action
 - Risk attributing effects of unchanged parts of the action to the baseline



The New Regulatory Definitions

- Baseline

- "...the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action." 50 C.F.R. § 402.02.

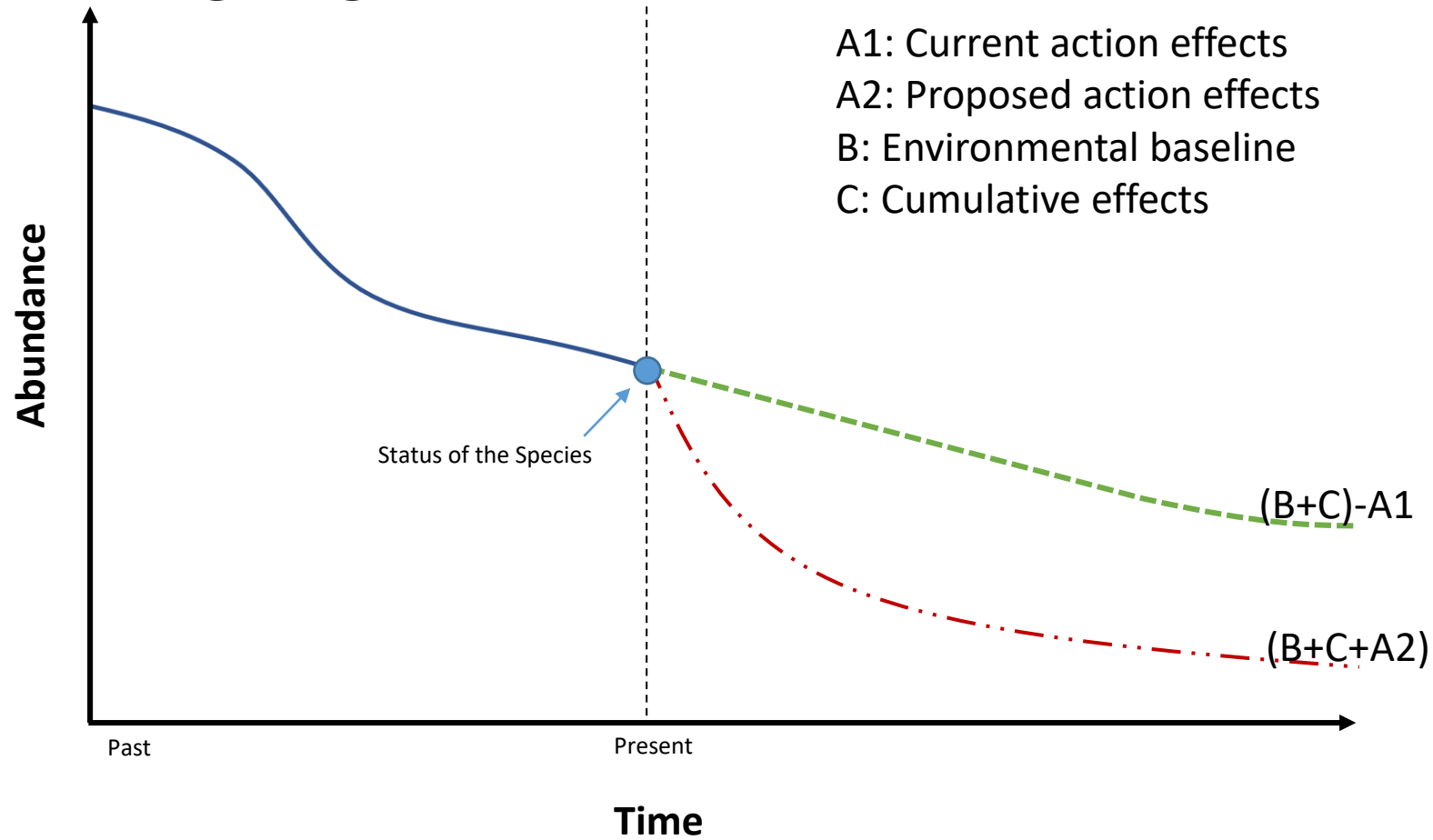
- Action effects

- "...all consequences to listed species or critical habitat that are caused by the proposed action...."

- Crux of a 7(a)(2) analysis: with and without the action



Hypothetical Jeopardy Analysis: Ongoing Action



Applying the Rules

- Key takeaways
 - For ongoing actions, B is not just “a snapshot in time”
 - Must take additional step of isolating the effects of the ongoing action
- Likely lots of ways to do this
 - Quantitatively
 - Qualitatively



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